

By: Representative Bell (21st)

To: Judiciary B

HOUSE BILL NO. 538

1 AN ACT TO AMEND SECTION 97-5-39, MISSISSIPPI CODE OF 1972, TO
2 CREATE THE CRIME OF "CHEMICAL ENDANGERMENT OF A CHILD"; TO PROVIDE
3 THAT CHEMICAL ENDANGERMENT OCCURS WHEN A CHILD INGESTS, INHALES OR
4 HAS SUBSTANTIAL CONTACT WITH CONTROLLED SUBSTANCES; AND FOR
5 RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 **SECTION 1.** Section 97-5-39, Mississippi Code of 1972, is
8 amended as follows:

9 97-5-39. (1) (a) Except as otherwise provided in this
10 section, any parent, guardian or other person who intentionally,
11 knowingly or recklessly commits any act or omits the performance
12 of any duty, which act or omission contributes to or tends to
13 contribute to the neglect or delinquency of any child or which act
14 or omission results in the abuse of any child, as defined in
15 Section 43-21-105(m) of the Youth Court Law, or who knowingly aids
16 any child in escaping or absenting himself from the guardianship
17 or custody of any person, agency or institution, or knowingly
18 harbors or conceals, or aids in harboring or concealing, any child
19 who has absented himself without permission from the guardianship



20 or custody of any person, agency or institution to which the child
21 shall have been committed by the youth court shall be guilty of a
22 misdemeanor, and upon conviction shall be punished by a fine not
23 to exceed One Thousand Dollars (\$1,000.00), or by imprisonment not
24 to exceed one (1) year in jail, or by both such fine and
25 imprisonment.

26 (b) For the purpose of this section, a child is a
27 person who has not reached his eighteenth birthday. A child who
28 has not reached his eighteenth birthday and is on active duty for
29 a branch of the armed services, or who is married, is not
30 considered a child for the purposes of this statute.

31 (c) If a child commits one (1) of the proscribed acts
32 in subsection (2)(a), (b) or (c) of this section upon another
33 child, then original jurisdiction of all such offenses shall be in
34 youth court.

35 (d) If the child's deprivation of necessary clothing,
36 shelter, health care or supervision appropriate to the child's age
37 results in substantial harm to the child's physical, mental or
38 emotional health, the person may be sentenced to imprisonment in
39 custody of the Department of Corrections for not more than five
40 (5) years or to payment of a fine of not more than Five Thousand
41 Dollars (\$5,000.00), or both.

42 (e) A parent, legal guardian or other person who
43 knowingly permits the continuing physical or sexual abuse of a
44 child is guilty of neglect of a child and may be sentenced to



imprisonment in the custody of the Department of Corrections for not more than ten (10) years or to payment of a fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

(2) Any person shall be guilty of felonious child abuse in the following circumstances:

(a) Whether bodily harm results or not, if the person shall intentionally, knowingly or recklessly:

- (i) Burn any child;
- (ii) Physically torture any child;
- (iii) Strangle, choke, smother or in any way interfere with any child's breathing;
- (iv) Poison a child;
- (v) Starve a child of nourishments needed to sustain life or growth;
- (vi) Use any type of deadly weapon upon any child;

(b) If some bodily harm to any child actually occurs, and if the person shall intentionally, knowingly or recklessly:

- (i) Throw, kick, bite, or cut any child;
- (ii) Strike a child under the age of fourteen (14) about the face or head with a closed fist;
- (iii) Strike a child under the age of five (5) in the face or head;
- (iv) Kick, bite, cut or strike a child's genitals; circumcision of a male child is not a violation under this subparagraph (iv);



70 (c) If serious bodily harm to any child actually
71 occurs, and if the person shall intentionally, knowingly or
72 recklessly:

73 (i) Strike any child on the face or head;

74 (ii) Disfigure or scar any child;

75 (iii) Whip, strike or otherwise abuse any child;

76 (d) Any person, upon conviction under paragraph (a) or
77 (c) of this subsection, shall be sentenced by the court to
78 imprisonment in the custody of the Department of Corrections for a
79 term of not less than five (5) years and up to life, as determined
80 by the court. Any person, upon conviction under paragraph (b) of
81 this subsection shall be sentenced by the court to imprisonment in
82 the custody of the Department of Corrections for a term of not
83 less than two (2) years nor more than ten (10) years, as
84 determined by the court. For any second or subsequent conviction
85 under this subsection (2), the person shall be sentenced to
86 imprisonment for life.

87 (e) For the purposes of this subsection (2), "bodily
88 harm" means any bodily injury to a child and includes, but is not
89 limited to, bruising, bleeding, lacerations, soft tissue swelling,
90 and external or internal swelling of any body organ.

91 (f) For the purposes of this subsection (2), "serious
92 bodily harm" means any serious bodily injury to a child and
93 includes, but is not limited to, the fracture of a bone, permanent
94 disfigurement, permanent scarring, or any internal bleeding or



95 internal trauma to any organ, any brain damage, any injury to the
96 eye or ear of a child or other vital organ, and impairment of any
97 bodily function.

98 (g) Nothing contained in paragraph (c) of this
99 subsection shall preclude a parent or guardian from disciplining a
100 child of that parent or guardian, or shall preclude a person in
101 loco parentis to a child from disciplining that child, if done in
102 a reasonable manner, and reasonable corporal punishment or
103 reasonable discipline as to that parent or guardian's child or
104 child to whom a person stands in loco parentis shall be a defense
105 to any violation charged under paragraph (c) of this subsection.

106 (h) Reasonable discipline and reasonable corporal
107 punishment shall not be a defense to acts described in paragraphs
108 (a) and (b) of this subsection or if a child suffers serious
109 bodily harm as a result of any act prohibited under paragraph (c)
110 of this subsection.

111 (3) Nothing contained in this section shall prevent
112 proceedings against the parent, guardian or other person under any
113 statute of this state or any municipal ordinance defining any act
114 as a crime or misdemeanor. Nothing in the provisions of this
115 section shall preclude any person from having a right to trial by
116 jury when charged with having violated the provisions of this
117 section.

118 (4) (a) A parent, legal guardian or caretaker who endangers
119 a child's person or health by knowingly causing or permitting the



child to be present where any person is selling, manufacturing or possessing immediate precursors or chemical substances with intent to manufacture, sell or possess a controlled substance as prohibited under Section 41-29-139 or 41-29-313, is guilty of child endangerment and may be sentenced to imprisonment for not more than ten (10) years or to payment of a fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

(b) If the endangerment results in substantial harm to the child's physical, mental or emotional health, the person may be sentenced to imprisonment for not more than twenty (20) years or to payment of a fine of not more than Twenty Thousand Dollars (\$20,000.00), or both.

(5) (a) A parent, legal guardian or caretaker who endangers a child's person or health by knowingly, recklessly, or intentionally causing or permitting a child to ingest, inhale or have substantial contact with any controlled substance, chemical substance or immediate precursors or chemical substances used to manufacture, sell or possess controlled substances prohibited by law is guilty of chemical endangerment of a child and may be sentenced to imprisonment in the custody of the Department of Corrections for not less than ten (10) years, nor more than twenty (20) years, payment of a fine of not more than Twenty Thousand Dollars (\$20,000.00), or both.

(b) The court shall impose punishment pursuant to this subsection (5) rather than imposing punishment authorized under



any other provision of law, unless another provision of law provides a greater penalty or a longer term of imprisonment.

(c) It shall be an affirmative defense to a violation of this section that the controlled substance was provided by lawful prescription for the child, and that it was administered to the child in accordance with the prescription instructions provided with the controlled substance.

(d) Any person found in violation of this act can be prosecuted in the child's county of residence or any county in which the chemical endangerment is discovered.

(* * *6) Nothing contained in this section shall prevent proceedings against the parent, guardian or other person under any statute of this state or any municipal ordinance defining any act as a crime or misdemeanor. Nothing in the provisions of this section shall preclude any person from having a right to trial by jury when charged with having violated the provisions of this section.

(* * *7) After consultation with the Department of Human Services, a regional mental health center or an appropriate professional person, a judge may suspend imposition or execution of a sentence provided in subsections (1) and (2) of this section and in lieu thereof require treatment over a specified period of time at any approved public or private treatment facility. A person may be eligible for treatment in lieu of criminal penalties no more than one (1) time.



170 (* * *8) In any proceeding resulting from a report made
171 pursuant to Section 43-21-353 of the Youth Court Law, the
172 testimony of the physician making the report regarding the child's
173 injuries or condition or cause thereof shall not be excluded on
174 the ground that the physician's testimony violates the
175 physician-patient privilege or similar privilege or rule against
176 disclosure. The physician's report shall not be considered as
177 evidence unless introduced as an exhibit to his testimony.

178 (* * *9) Any criminal prosecution arising from a violation
179 of this section shall be tried in the circuit, county, justice or
180 municipal court having jurisdiction; provided, however, that
181 nothing herein shall abridge or dilute the contempt powers of the
182 youth court.

183 **SECTION 2.** This act shall take effect and be in force from
184 and after July 1, 2021.

